SUPREME COURT, U.S.
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No. 92-542

In The

Supreme Court of the United States

October Term, 1992

STATE OF CALIFORNIA,

Petitioner,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF RIVERSIDE, et al.,

Respondents.

Petition For A Writ Of Certiorari To The Court Of Appeal For The State Of California, Fourth Appellate District, Division Two

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Real Parties In Interest (plaintiffs in the lower court) submit that the instant Petition presents *no* federal question for review.

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I. STATEMENT OF THE CASE

At issue is a California Court of Appeal decision giving collateral estoppel effect to a federal court's fact findings which were rendered in adjudicating pendent state law claims. The California Court of Appeal concluded that, as a matter of California law and policy, the state trial court properly adopted and utilized the federal rule of finality when barring the re-litigation of the matters determined by the federal court. Now before the United States Supreme Court, Petitioner attempts to challenge this construction and application of state law.

II. SUMMARY OF ARGUMENT

Despite petitioner's characterizations, the decision of the court below implicates *no* federal question. The California Court of Appeal simply clarified an issue of *state* law.

The appellate court held that California has a policy of deferring to federal law when determining the issue-preclusive effect of federal-court findings. As a matter of state law, this policy of deference applies irrespective of whether the federal-court findings are made when adjudicating a federal question or whether they are made in conjunction with a pendent state law claim.

Because the California Court of Appeal was determining an issue of state law and because no federal interest has been impaired, jurisdiction under Supreme Court Rule 10 does not lie.

III. ARGUMENT

A. PETITIONER FABRICATES ISSUES FOR REVIEW IN AN EFFORT TO FIND A FEDERAL QUESTION ON WHICH TO BASE ITS PETITION

1. The Subject Decision Does Not Turn on Federal Full-Faith-and-Credit Principles

Petitioner advances matters for review that are not at issue in this case and which were unnecessary to the decision of the California Court of Appeal. Petitioner's first "question presented" is deceptively framed as follows:

> Does the Full Faith and Credit Clause of the United States Constitution and/or the Full Faith and Credit Act require that federal law determine the preclusive effect of a prior federal order adjudicating state law claims?

Petition at i.

Petitioner's framing of the first "question presented" creates the impression that it seeks to have federal collateral estoppel law applied in this case. In fact, however, Petitioner, citing *Stoll v. Gottlieb*, 305 U.S. 165 (1938), wants this Court to mandate that only the rule of finality applied to state-court adjudications can govern the preclusive effect of federal-court determinations of pendent state law claims. But state law *is already being applied* in this case. The state court, in interpreting state law, has simply decided to adopt the federal-court rule of finality for purposes of the collateral-estoppel effect of factual findings made in a federal proceeding. This construction

and application of state law should be left to the California courts, which have resoundingly rejected Petitioner's contentions concerning California law.

Where, as here, state law is applied in a way that does not violate federal law or interfere with any federal right, Supreme Court intervention is unwarranted:

> This Court from the time of its foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds . . . . Our only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. And our power is to correct wrong judgments, not to revise opinions. We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of federal laws, our review could amount to nothing more than an advisory opinion.

Herb v. Pitcairn, 324 U.S. 117, 125-126 (1945); *accord Michigan v. Long*, 463 U.S. 1032, 1042 (1983).

Even assuming federal full faith-and-credit provisions require California to apply federal law in this case, the unpublished opinion[1] of the California Court of Appeal obviously does not contravene federal principles of full faith and credit. On the contrary, the Court of Appeal deferred to the federal rule of finality in crafting

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[1] California Rules of Court provide that an unpublished opinion "shall not be cited or relied on by a court or a party in any other action or proceeding." California Rule of Court 977. Hence, the unpublished opinion at issue here has no value as precedent other than to the parties to this proceeding.

the state-law rule. Since California is embracing and utilizing federal law to determine the effect of federal-court rulings, the power and authority of federal courts to render and enforce their judgments is not being threatened. Moreover, because deference to the federal court is occurring as a matter of California law, any issue concerning the scope and effect of federal full-faith-and-credit provisions need not, and indeed should not, be reached by this Court. *See Piccirillo v. New York*, 400 U.S. 548 (1971); *California v. Krivda*, 409 U.S. 33 (1972); *Department of Mental Hygiene of California v. Kirchner*, 380 U.S. 194 (1965); *Michigan v. Long*, 463 U.S. 1032, 1040 (1983) ("Respect for the independence of state courts, as well as avoidance of rendering advisory opinions, have been the cornerstones of this Court's refusal to decide cases where there is an adequate and independent state ground.").

2. Petitioner Also Seeks an Advisory Opinion on an Irrelevant *Erie* Question

Petitioner's second "question presented" is equally unfounded. Contrary to Petitioner's assertion, *Erie R.R. v. Tompkins*, 304 U.S. 64 (1938), has no bearing here. This case does not present the question of which law a *federal* court should apply; rather, the issue presented is solely one of *state* law. And because the state court has construed state law so as to defer to federal law, this case presents a situation exactly opposite to that presented in *Erie*, which involved a federal court applying state law.

Moreover, the prior federal action was *not* a diversity action. In that action, Petitioner itself, as plaintiff, invoked federal jurisdiction by bringing suit under both

federal and state law. *See* Court of Appeal's opinion, at Petition Appendix A at App. 4 (hereinafter "Opinion at App. ___."). Defendants in the federal court then filed compulsory counterclaims under many of the same state laws asserted by Petitioner in its pendent claims. *Id.* Those compulsory counterclaims are the basis for collateral estoppel in this case. Because Petitioner itself invoked federal jurisdiction to pursue state law claims, Petitioner is most disingenuous in arguing that federal collateral estoppel law should not form the basis for the state court's rule of finality.

The absurdity of Petitioner's argument is apparent when viewed in light of the *raison d'etre* of diversity jurisdiction, namely, to provide a neutral forum for the resolution of disputes between citizens of different states. *Pease v. Peck*, 59 U.S. 595, 599 (1856). Here, that concern is irrelevant. Petitioner has no ground, equitable or legal, for insisting that the state court apply a rule of finality different from that which would be applied by Petitioner's own forum of choice: the federal court.

Petitioner must therefore ignore the record in asserting that review should be granted here to resolve the "disagreement among the circuits as to whether rules of res judicata are procedural or substantive under the principles laid down in *Erie*." Petition at 15. The California court did not decide what law federal courts should apply. Rather, the court looked to federal cases for guidance on how *California* should approach this issue. The court concluded that the "best-reasoned" approach is the one followed by the majority of circuits, namely, that the effect given to federal-court determinations of state-law

claims should be governed by federal law. Opinion at App. 10-11.

Significantly, the Court of Appeal noted that, even though the Ninth Circuit embraces the minority position that state law should apply to determine the effect of federal findings, because California defers to federal law to fashion the state-law rule, the "somewhat circular result" is that federal law applies anyway. Opinion at App. 13. *See Bates v. Union Oil Company of California*, 944 F.2d 647, 649 (9th Cir. 1991), *cert. denied*, 118 L. Ed. 2d 424 (1992) (noting California "would apply federal law to determine the preclusive effect of a prior federal judgment"); *Costantini v. Trans World Airlines*, 681 F.2d 1199, 1201 (9th Cir.), *cert. denied*, 459 U.S. 1087 (1982); *Performance Plus Fund, Ltd. v. Winfield & Co.*, 443 F. Supp. 1188, 1190 (N.D. Cal. 1977) (California has applied "what this Court considers the appropriate rule and has relied on federal law to give res judicata effect to a federal court judgment pending on appeal").

The Court of Appeal concluded its analysis by explicitly holding that California will defer to the federal rule regardless of whether a federal- or state-law issue was being decided, and the federal rule of finality will be utilized even if a federal court might look to state law, since "the policy of this state would reflect the inquiry back to federal authority." Opinion at App. 16-17.

Accordingly, any split in the federal circuits over how a federal court might treat a prior *diversity* action for purposes of collateral estoppel is irrelevant to the facts of this case.

B. THE SUBJECT DECISION RESTS ON WELL-ESTABLISHED PRINCIPLES OF CALIFORNIA LAW

In a long and unbroken line of cases, California courts have consistently looked to principles of federal law to determine how the state would treat federal-court rulings. *See, e.g., Estate of Hilton*, 199 Cal. App. 3d 1145, 1168 (1988); *Younger v. Jensen*, 26 Cal. 3d 397, 411 (1980); *Calhoun v. Franchise Tax Board*, 20 Cal. 3d 881, 887, *cert. denied*, 439 U.S. 872 (1978); *Swaffield v. Universal Ecsco Corp.*, 271 Cal. App. 2d 147, 160 (1969). As respected California legal commentator Bernard Witkin reports in his treatise on California procedure, California follows the rule that a federal court judgment has the same effect in the courts of this state as it would have in a federal court. 7 B. Witkin, *California Procedure* § 205, at 641 (3rd ed. 1985). The court below relied on this well-established principle of California law, stating, "it has also been repeatedly held that California courts will give the same effect to a federal court's order as that court would give it." Opinion at App. 8-9.

While Petitioner urged the Court of Appeal to distinguish this California authority where the federal court determined state-law issues, the Court of Appeal rejected this argument on the ground that both California policy and California case law require deference to the federal court notwithstanding the nature of the issues decided by that court. Opinion at App. 14-16. After examining the relevant California cases, the court concluded: "We can find in these authorities no indication that California would adopt a jealous rule aimed at exerting special

powers over a federal court adjudication based on California law." Opinion at App. 16.

Petitioner also argued that the rule of finality applied to state-court adjudications should be utilized here, because that is supposedly the rule a federal court would apply. The Court of Appeal rejected this approach on two grounds: First, that the best-reasoned federal cases apply federal law, and in any event, the state court will utilize the federal rule regardless of how a federal court might approach this issue. As the court concluded:

> We therefore conclude that a federal court would look to its own law to determine the effect of the orders in question; even if it looked to California law, the policy of this state would reflect the inquiry back to federal authority. In either case, California respects the final federal decision on the issue.

Opinion at App. 16-17 (footnote omitted).

IV. CONCLUSION

The Court of Appeal has fully and carefully considered this matter, twice concluding that California will follow the federal rule when gauging the collateral-estoppel effect of federal-court findings on pendent state claims. *See* Petition, Appendix A and C. Although Petitioner has argued its unorthodox interpretation of California law to the California Supreme Court, that court has refused to disturb the Court of Appeal's determination that California law defers to federal law in this situation. *See* Petition, Appendix B. Real Parties respectfully submit

that California's determination of this state-law issue is beyond the purview of this Court, and that the matter should rest with the state court. The petition for writ of certiorari should therefore be denied.

DATE: October 9th, 1992

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